

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

NOTICE OF MOTION

-against-

O6-CR-0316 (CM)

STEVEN RUBINSTEIN,

Defendant.

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PLEASE TAKE NOTICE, that upon the annexed affidavit of JEFFREY A. RABIN, Esq., duly sworn to on the 1st day of August, 2006, the undersigned will move this Court before the Hon. Colleen McMahon, United States District Judge, at a date convenient to the Court, at the Courthouse located at 300 Quarropas Street, White Plains, New York for an Order declaring the statutory mandatory minimum sentence required by Title 18 U.S.C. §2252A(a)(2)(B) and Title 18 U.S.C. §2422(b) unconstitutional because the removing of sentencing discretion from the courts requiring imposition of a mandatory sentence at the will of the prosecutor violates the separation of powers, and the elimination of the court's ability to make an individualized determination as to Mr. Rubinstein's sentence violates his right to due process, and for such other relief as this Court may deem just and proper.

DATED: Brooklyn, New York
August 1, 2006

Yours, etc.,

JEFFREY A. RABIN, Esq.
JAR 3371
Attorney for defendant
105 Court Street-Suite 500
Brooklyn, New York 11201
(718)625-2900

To: A.U.S.A. Cynthia K. Dunne

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

AFFIDAVIT

-against-

O6-CR-0316 (CM)

STEVEN RUBINSTEIN,

Defendant.

-----X

State of New York)

)ss:

County of Kings)

JEFFREY A. RABIN, being duly sworn, deposes and says:

I am the attorney for the defendant, Steven Rubinstein, and am duly admitted to practice before this Court.

I am submitting this affidavit in support of the defendant's motion to declare the statutory mandatory sentencing provisions, pursuant to which he is to be sentenced on September 11, 2006, unconstitutional, for the reasons to be stated in the attached memorandum of law.

Mr. Rubinstein pled guilty on April 10, 2006, before Magistrate Fox, to a violation of Title 18 U.S.C. §2252A(a)(2)(B), under Count One of a Felony Information, and to a violation of Title 18 U.S.C. §2422(b), under Count 2 of the information, each of which carry a statutory mandatory minimum sentence of five years incarceration. It is the position of Mr. Rubinstein that the statutory minimum sentence is unconstitutional, and should not be considered in this case.

The position of Mr. Rubinstein, regarding the constitutionality of the mandatory sentencing provisions that will be applied to his case concerns the fact that, a) Removing Sentencing Discretion

From the Courts and Requiring Imposition of a Mandatory Sentence at the Will of The Prosecutor Violates The Separation of Powers, and b) The Elimination of The Court's Ability to Make an Individualized Determination as to Mr. Rubinstein's Sentence Violates His Right To Due Process. In view of this position, Mr. Rubinstein will be requesting this Court to consider the sentence to impose upon him based upon the advisory Guidelines, and the criteria set forth in 18 U.S.C. §3553(a), without the prosecution dictating the minimum sentence to be imposed.

WHEREFORE, it is respectfully requested that this motion be granted in all respects, and the statutory mandatory minimum sentence be declared unconstitutional.

Dated: Brooklyn, New York
August 1, 2006

JEFFREY A. RABIN, Esq.
JAR 3371

Sworn to before me this
1st day of August, 2006
